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PROBATE DIVISION

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CLERK-SUPERIOR COURT
SAN DIEGO COUNTY, CA

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5 Trustee and Attorney for the
Robert H. Rau Separate Property Trust
6 dated April 27, 2018, as amended.

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO—CENTRAL DIVISION
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11 In the Matter of:

Case No. 37-2019-00031743-PR-TR-CTL

12
13 THE ROBERT H. RAU SEPARATE
14 PROPERTY TRUST, dated April 27, 2018,
as amended.

15
16 TRUSTEE MICHAEL E. WILLIAMS'
ANSWER TO THE PETITION OF
LAURA RAU FOR AN ORDER
FINDING THAT THE SECOND
AMENDMENT AND RESTATEMENT
TO THE ROBERT H. RAU SEPARATE
PROPERTY TRUST SHOULD BE
INVALIDATED BASED ON UNDUE
INFLUENCE AND FOR OTHER
RELIEF

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20 DATE: August 27, 2019
21 TIME: 9:00 a.m.

22 Department: 503
23 Judge: Hon. Julia C. Kelety

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TRUSTEE MICHAEL E. WILLIAMS'S ANSWER TO PETITION FOR ORDER FINDING THAT THE SECOND
AMENDMENT AND RESTATEMENT TO THE ROBERT H. RAU SEPARATE PROPERTY TRUST SHOULD BE
INVALIDATED AND FOR OTHER RELIEF

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3 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

4 Respondent/Trustee, Michael E. Williams ("Respondent" or "Williams"), as Trustee and
5 attorney, on behalf of the ROBERT H. RAU SEPARATE PROPERTY TRUST dated April 27, 2018
6 ("SP Trust" or "Trust A"), as amended on May 14, 2018 ("First Amendment"), June 18, 2018 ("Second
7 Amendment and Restatement"), and September 7, 2018 ("First Amendment to the Second Amendment
8 and Restatement") (the latter two forming the presently operative SP Trust instrument and collectively
9 referred to herein as "SP Trust Restatement," as referenced by Petitioner); hereby submits his Answer
10 in opposition to the Petition of LAURA RAU ("Petitioner" or "Laura") filed June 20, 2019, objecting to
11 the said Petition and requesting that the Court deny the Petition in its entirety.

12 **I. INTRODUCTION:**

13 "In construing a trust instrument, the intent of the trustor prevails and it must be ascertained from
14 the whole of the trust instrument, not just separate parts of it." *Ammerman v. Callendar* (4th App. Dist.
15 2016) 245 Cal. App. 4th 1058, 1073 (citations omitted); see also *Estate of O'Connor* (4th App. Dist. 2018)
16 26 Cal. App. 5th 871, 878 ("The paramount rule in construing the trust is to determine the trustor's intent
17 from the whole of the instrument and in accordance with applicable law" [citing CPC § 21102(a);
18 *Ammerman, supra* at 1073-1074]).

19 In or about September, 2018, Trustor Robert Rau ("Trustor" or "Robert"), who had previously
20 been represented by Williams on another matter unrelated to the subject of the present action, contacted
21 Williams to request his assistance in preparing various changes and amendments to his two Trusts and
22 other components of his estate plan (Declaration of Michael E. Williams ["Williams Dec."] ¶ 4).
23 Williams met with Robert, and discussed with him what he had already changed and further wished to
24 change and accomplish with respect to his estate plan. At all times throughout this discussion, Robert
25 made it very clear that it was his desire and intent (1) to revoke all previous designations of successor
26 trustees to his Trusts, and in particular, to remove Laura Rau from any present designation as a potential

1 Successor Trustee to either of the Trusts (or as a potential Personal Representative/Executor of his
2 estate); and (2) to appoint Stacy L. Rau Green as the first designated Successor Trustee; then Mark
3 Green; then Williams to his Trusts (and for Williams to represent his Estate) (Williams Dec. ¶ 5). He
4 also made it very clear that he intended to remain as Trustee until his death or inability to serve as such.
5 He also indicated through these expressions that he intended and understood he was fully authorized and
6 empowered to make such revocations, removals, and designations of Successor Trustees under the terms
7 of the Trust instruments, particularly Sections 2.01 through 2.04, as stated in both the original SP Trust
8 and the SP Trust Restatement (Pet. Ex. A, C) (Williams Dec. ¶ 6). Also, he plainly expressed his intent
9 that Laura be removed from any potential role as Successor Trustee, or any other representative capacity
10 with respect to his Estate (Williams Dec. ¶ 5). Williams agreed to be named as third Successor Trustee,
11 but declined to draft any amendments to the Trust, and advised Robert to have any such work performed
12 by other counsel (Williams Dec. ¶ 5)

13 The Petition at issue seeks Orders from this Court that would be directly contrary to the clear
14 intent of the Trustor, as expressed in the SP Trust Restatement, which he executed in accordance with
15 his own will and volition, at a time when he was mentally competent and had testamentary capacity to
16 do so, as shown by evidence including documents he prepared for his counsel's office regarding his
17 estate plan, plus documents provided by his counsel and his physician (Williams Dec. ¶¶ 8, 9 and
18 Exhibits 1, 2, 3, and 4 thereto). Granting the Petitioner's requested relief would contravene the clear
19 terms of the operative Trust documents, the Trustor's intent, and governing principles of California law.
20 Accordingly, Respondent opposes and objects to the said Petition and respectfully requests the Court
21 deny the Petition in its entirety, and further; that the Court hold valid and enforce the SP Trust
22 Restatement documents according to their terms and to the Trustor's intent as expressed therein (and for
23 other relief as set forth below).

24 **II. RESPONSES TO THE ALLEGATIONS OF THE PETITION:**

25 Petitioner has requested this Court enter various Orders, essentially finding that the SP Trust
26 Restatement should be invalidated based (1) undue influence allegedly exerted over the Trustor, by his
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1 wife, Francine Coppola Rau ("Francine"); (2) elder abuse in the form of isolation also allegedly
2 committed against the Trustor by Francine; (3) Judicial Notice of irrelevant documents related to
3 Francine's prior dissolution proceedings; and (4) an Order finding that Francine should be deemed to
4 have predeceased the Trustor. Respondent/Trustee responds to Petitioner's allegations as follows:

5 1. Responding to Paragraph 1 of the Petition, Respondent admits the substantial proof of the
6 allegations.

7 2. Responding to Paragraph 2 of the Petition, Respondent admits the substantial proof of the
8 allegations.

9 3. Responding to Paragraph 3 of the Petition, Respondent admits that Mercedes Rau died on
10 May 28, 2017. Respondent lacks information sufficient to form a belief as to the other allegations set
11 forth in said Paragraph and on that basis denies the allegations set forth therein.

12 4. Responding to Paragraph 4 of the Petition, Respondent admits that upon the death of
13 Mercedes Rau, the surviving trustor, Robert H. Rau, divided the Trust estate between the Mercedes Rau
14 Exemption Trust B and the Robert H Rau Survivor's Trust A. All remaining allegations of Paragraph 4
15 are denied.

16 5. Responding to Paragraph 5 of the Petition, Respondent admits the substantial proof of the
17 allegations.

18 6. Responding to Paragraph 6 of the Petition, Respondent admits that on April 27, 2018, Robert
19 H. Rau executed the Rau SP Trust; and that on that date, he was not yet married to Francine. As for the
20 remaining allegations of Paragraph 6, the said allegations amount to Petitioner's interpretation of the
21 document, which document speaks for itself, and a copy of which is attached and incorporated by
22 reference as Petitioner's Exhibit A. To the extent an answer to said allegations is required, they are
23 denied as set forth.

24 7. Responding to Paragraph 7 of the Petition, Respondent admits the substantial proof of the
25 allegations.

1 8. Responding to Paragraph 8 of the Petition, Respondent admits that on May 1, 2018, Robert H.
2 Rau married Francine Coppola. As for the remaining allegations of Paragraph 8, Respondent lacks
3 information sufficient to form a belief as to the allegations set forth in said Paragraph and on that basis
4 denies the allegations set forth therein.

5 9. Responding to Paragraph 9 of the Petition, Respondent admits that on May 14, 2018, Robert
6 H. Rau executed a First Amendment to the Rau SP Trust. As for the remaining allegations of Paragraph
7 9, Respondent alleges the said allegations amount to Petitioner's interpretation of the document, which
8 document speaks for itself, and a copy of which is attached and incorporated by reference as Petitioner's
9 Exhibit B. To the extent an answer to the said allegations is required, they are denied as set forth.

10 10. Responding to Paragraph 10 of the Petition, Respondent admits the substantial proof of the
11 allegations.

12 11. Responding to Paragraph 11 of the Petition, Respondent alleges the allegations amount to
13 Petitioner's interpretation of the SP Trust Restatement, which document speaks for itself, and a copy of
14 which is attached and incorporated by reference as Petitioner's Exhibit C. To the extent an answer to
15 the said allegations is required, Respondent admits that the SP Trust Restatement provides that
16 distribution of the balance of the trust estate shall be equally divided between two of the Children, Stacy
17 Lynn Rau Green and Michael A. Baker, and the Decedent's other three Children are disinherited under
18 the SP Trust Restatement. To the extent an answer to the other said allegations is required, Respondent
19 denies such allegations.

20 12. Responding to Paragraph 12 of the Petition, Respondent denies Petitioner's allegation that
21 Michael E. Williams was the drafting attorney of the First Amendment to the Second Amendment and
22 Complete Restatement of the Robert H. Rau Separate Property Trust (Plaintiff's Exhibit D, erroneously
23 identified in this Paragraph as the "First Amendment to the Second Amendment and Complete
24 Restatement of SP Trust Restatement"). Respondent admits the substantial proof of all other allegations
25 set forth in Paragraph 12.

1 13. Responding to Paragraph 13 of the Petition, Respondent denies, generally and specifically,
2 each and every allegation contained therein.

3 14. Responding to Paragraph 14 of the Petition, Respondent admits that Robert H. Rau died on
4 February 1, 2019. Respondent lacks information sufficient to form a belief as to the other allegations set
5 forth in said Paragraph and on that basis denies the allegations set forth therein.

6 15. Responding to Paragraph 15 of the Petition, Respondent admits the substantial proof of the
7 allegations.

8 16. Responding to Paragraph 16 of the Petition, Respondent alleges the statements of said
9 Paragraph constitute Petitioner's characterization of her claims, legal argument, and/or legal conclusions
10 with no direct allegations; to which no answer is required. To the extent the Paragraph may be deemed
11 to contain any factual allegations to which an answer is required, said allegations are denied.

12 17. Responding to Paragraph 17 of the Petition, Respondent admits that the cited statutes
13 contain the language quoted in the said Paragraph. Otherwise, Respondent alleges the said Paragraph
14 constitutes Petitioner's characterization of her claims, legal argument, and/or legal conclusions with no
15 direct allegations; to which no answer is required. To the extent the Paragraph may be deemed to
16 contain any factual allegations to which an answer is required, said allegations are denied.

17 18. Responding to Paragraph 18 of the Petition, Respondent admits that the cited statute
18 contains the language quoted in the said Paragraph. Otherwise, Respondent alleges the said Paragraph
19 constitutes Petitioner's characterization of her claims, legal argument, and/or legal conclusions with no
20 direct allegations; to which no answer is required. To the extent the Paragraph may be deemed to
21 contain any factual allegations to which an answer is required, said allegations are denied.

22 19. Responding to Paragraph 19 of the Petition, as for Petitioner's allegation that she is an
23 "interested person" as defined by California Probate Code Section 48, Respondent alleges this allegation
24 constitutes Petitioner's characterization of her claims, legal argument, and/or legal conclusions; to which
25 no answer is required. To the extent the Paragraph may be deemed to contain any factual allegations to
26 which an answer is required, said allegations are denied. With respect to all remaining allegations of the
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1 said Paragraph, Respondent lacks information sufficient to form a belief as to the allegations set forth in
2 said Paragraph and on that basis denies the allegations set forth therein.

3 20. Responding to Paragraph 20, Respondent incorporates by this reference all of the above
4 Paragraphs of this Answer as though fully set forth.

5 21. Responding to Paragraph 21, Respondent lacks information sufficient to form a belief as to
6 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

7 22. Responding to Paragraph 22, Respondent lacks information sufficient to form a belief as to
8 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

9 23. Responding to Paragraph 23, with respect to the first sentence, Respondent lacks
10 information sufficient to form a belief as to the allegations set forth and on that basis denies the
11 allegations set forth therein. Regarding the remaining allegations of Paragraph 23, such allegations
12 amount to unqualified expert opinions and conclusions, wherein Plaintiff improperly attempts to provide
13 a psychological analysis of Francine's alleged acts and intentions, and of Robert's alleged reactions; to
14 support her legal arguments and conclusions; with no accompanying allegations to suggest that she has
15 any expertise, background, or qualification to offer such opinions. Accordingly, Respondent
16 affirmatively alleges that all such allegations are speculative, conjectural, and improper; amounting to
17 unqualified opinions and conclusions of fact and law to which no answer is required. To the extent
18 these allegations of the said Paragraph may be deemed to contain any factual allegations to which an
19 answer is required, said allegations are denied.

20 24. Responding to Paragraph 24, Respondent lacks information sufficient to form a belief as to
21 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

22 25. Responding to Paragraph 25, Respondent lacks information sufficient to form a belief as to
23 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

24 26. Responding to Paragraph 26, Respondent lacks information sufficient to form a belief as to
25 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.
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27. Responding to Paragraph 27, Respondent lacks information sufficient to form a belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

28. Responding to Paragraph 28, Respondent lacks information sufficient to form a belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

29. Responding to Paragraph 29, Respondent lacks information sufficient to form a belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

30. Responding to Paragraph 30, Respondent lacks information sufficient to form a belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

31. Responding to Paragraph 31, Respondent lacks information sufficient to form a belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

32. Responding to Paragraph 32, Respondent lacks information sufficient to form a belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

33. Responding to Paragraph 33, Respondent admits that Decedent and Francine were married on May 1, 2018. As for the allegations of subparts A through D of Paragraph 33, Respondent alleges the said allegations consist of incomplete excerpts from purported court records ranging from 11 to 38 years old; which documents speak for themselves, and for which no proper request for judicial notice has been made in a separate document with the materials attached, as required by California Rules of Court, Rules 3.1113(l) and 3.1306(c). Further, such materials are not properly subject to judicial notice in that they are irrelevant to the issues raised in the Petition. See *Mangini v. R. J. Reynolds Tobacco Co.* (1994) 7 Cal. 4th 1057, 1063 (court should decline to take judicial notice of material that is not relevant to the legal questions at hand). Additionally, Petitioner apparently seeks judicial notice of the alleged truth of the statements and opinions within the cited documents, which is improper. See *Marocco v. Ford Motor Co.* (1970) 7 Cal. App. 3d 84, 88 (judicial notice of the authenticity and contents of an official document does not establish the truth of the recitals therein, nor does it render inadmissible hearsay admissible). Accordingly, Respondent affirmatively alleges that all allegations contained within subparagraphs A through D amount to improper assertions to which no answer is required. To the extent these allegations

1 of the said Paragraph may be deemed to contain any factual allegations to which an answer is required,
2 Respondent lacks information sufficient to form a belief as to the allegations set forth in the said
3 Paragraph and on that basis denies the allegations set forth therein.

4 34. Responding to Paragraph 34, Respondent alleges that the purported court records identified
5 at subparts A through D of Paragraph 33, consist of incomplete excerpts various documents ranging
6 from 11 to 38 years old, which documents speak for themselves, and for which no proper request for
7 judicial notice is made in a separate document with the materials attached, as required by California
8 Rules of Court, Rules 3.1113(l) and 3.1306(c). Further, such materials are not properly subject to
9 judicial notice in that they are irrelevant to the issues raised in the Petition. See *Mangini v. R. J.*
10 *Reynolds Tobacco Co.* (1994) 7 Cal. 4th 1057, 1063 (court should decline to take judicial notice of
11 material that is not relevant to the legal questions at hand). Moreover, Petitioner apparently seeks
12 judicial notice of the alleged truth of the statements and opinions within the cited documents, which is
13 improper. See *Marocco v. Ford Motor Co.* (1970) 7 Cal. App. 3d 84, 88 (judicial notice of the
14 authenticity and contents of an official document does not establish the truth of the recitals therein, nor
15 does it render inadmissible hearsay admissible). Additionally, Respondent alleges that the allegations of
16 the first sentence of Paragraph 34 amount to unqualified expert opinions and conclusions, in which
17 Plaintiff improperly attempts to provide a legal and psychological analysis of Francine's alleged acts and
18 intentions, and of Robert's alleged reactions, to support her legal arguments and conclusions; with no
19 accompanying allegations to suggest that she has any expertise, background, or qualification to offer
20 such opinions. Accordingly, Respondent affirmatively alleges that all such allegations are speculative,
21 conjectural, and improper; amounting to unqualified opinions and conclusions of fact and law to which
22 no answer is required. To the extent these allegations of the said Paragraph may be deemed to contain
23 any factual allegations to which an answer is required, Respondent lacks information sufficient to form a
24 belief as to the allegations set forth in the said Paragraph and on that basis denies the allegations set
25 forth therein.

1 35. Responding to Paragraph 35, Respondent lacks information sufficient to form a belief as to
2 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

3 36. Responding to Paragraph 36, Respondent lacks information sufficient to form a belief as to
4 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

5 37. Responding to Paragraph 37, Respondent lacks information sufficient to form a belief as to
6 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

7 38. Responding to Paragraph 38, Respondent admits that Decedent signed the SP Trust
8 Restatement on June 18, 2018. Respondent lacks information sufficient to form a belief as to the other
9 allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

10 39. Responding to Paragraph 39 of the Petition, Respondent admits that the cited statute contains
11 the language quoted in the said Paragraph. Otherwise, Respondent alleges the said Paragraph constitutes
12 Petitioner's characterization of her claims, legal argument, and/or legal conclusions with no direct
13 allegations; to which no answer is required. To the extent the Paragraph may be deemed to contain any
14 factual allegations to which an answer is required, said allegations are denied.

15 40. Responding to Paragraph 40, Respondent lacks information sufficient to form a belief as to
16 the allegations set forth in the said Paragraph and on that basis denies the allegations set forth therein.

17 41. Responding to Paragraph 41 of the Petition, Respondent admits that the cited statute
18 contains essentially the language paraphrased in the said Paragraph. Otherwise, Respondent alleges the
19 said Paragraph constitutes Petitioner's characterization of her claims, legal argument, and/or legal
20 conclusions; to which no answer is required. To the extent the Paragraph may be deemed to contain any
21 factual allegations to which an answer is required, said allegations are denied. Respondent affirmatively
22 alleges that Petitioner is neither a trustee nor a beneficiary of the SP Trust Restatement (See Petitioner's
23 Ex. C, D).

24 42. Responding to Paragraph 42, Respondent incorporates by this reference all of the above
25 Paragraphs of the Answer as though fully set forth.
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1 43. Responding to Paragraph 43 of the Petition, Respondent admits that the cited statute contains
2 the language quoted in the said Paragraph. Otherwise, Respondent alleges the said Paragraph constitutes
3 Petitioner's characterization of her claims, legal argument, and/or legal conclusions with no direct
4 allegations; to which no answer is required. To the extent the Paragraph may be deemed to contain any
5 factual allegations to which an answer is required, said allegations are denied.

6 44. Responding to Paragraph 44 of the Petition, Respondent admits the substantial proof of the
7 allegations.

8 45. Responding to Paragraph 43 of the Petition, Respondent admits that the cited statute contains
9 the language quoted in the said Paragraph. Otherwise, Respondent alleges the said Paragraph constitutes
10 Petitioner's characterization of her claims, legal argument, and/or legal conclusions with no direct
11 allegations; to which no answer is required. To the extent the Paragraph may be deemed to contain any
12 factual allegations to which an answer is required, said allegations are denied.

13 46. Responding to Paragraph 46 of the Petition, Respondent alleges the allegations therein
14 constitute Petitioner's characterization of her claims, legal argument, and/or legal conclusions; to which
15 no answer is required. To the extent the Paragraph may be deemed to contain any factual allegations to
16 which an answer is required, Respondent lacks information sufficient to form a belief as to the
17 allegations set forth in said Paragraph and on that basis denies the allegations set forth therein.

18 47. Responding to Paragraph 47 of the Petition, Respondent alleges the allegations therein are
19 speculative and constitute Petitioner's characterization of her claims, legal argument, and/or legal
20 conclusions; to which no answer is required. To the extent the Paragraph may be deemed to contain any
21 factual allegations to which an answer is required, Respondent lacks information sufficient to form a
22 belief as to the allegations set forth in said Paragraph and on that basis denies the allegations.

23 48. Responding to Paragraph 48 of the Petition, Respondent alleges the allegations therein
24 constitute Petitioner's characterization of her claims, legal argument, and/or legal conclusions; to which
25 no answer is required. To the extent the Paragraph may be deemed to contain any factual allegations to
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1 which an answer is required, Respondent lacks information sufficient to form a belief as to the
2 allegations set forth in said Paragraph and on that basis denies the allegations.

3 49. Responding to Paragraph 49 of the Petition, Respondent admits that the persons listed are
4 presumably entitled to notice of the said Petition, and that Michael E. Williams is accurately named as
5 Successor Trustee. Respondent lacks information sufficient to form a belief as to the accuracy of the
6 allegations as to the "relationship" of each other person as set forth in said Paragraph, and on that basis
7 denies the said allegations.

8 AFFIRMATIVE AND OTHER DEFENSES

9 FIRST AFFIRMATIVE DEFENSE

10 (Failure of Facts to State a Cause of Action)

11 1. The Petition does not state facts sufficient to constitute a cause of action; accordingly, the
12 Petition should be dismissed pursuant to Code of Civil Procedure § 430.10(e).

13 SECOND AFFIRMATIVE DEFENSE

14 (Lack of Standing)

15 2. As a separate, affirmative defense, Respondent alleges that Petitioner lacks standing to pursue
16 any of the relief sought in the Petition, all of which is based on two central theories: (1) that the SP
17 Trust Restatement should be invalidated based on Francine's alleged exercise of undue influence over
18 Robert; and (2) that the SP Trust Restatement should be invalidated because Francine allegedly
19 committed elder abuse against Robert. Petitioner lacks standing under either of these asserted theories,
20 or any other.

21 Probate Code (PC) § 17200(a) allows a *trustee or beneficiary* of a trust to petition the Court
22 "concerning the internal affairs of the trust or to determine the existence of the trust." This specifically
23 includes determining questions of construction of a trust instrument and determining of the validity of a
24 trust provision. See §17200(b)(1) and (3). However, under the SP Trust Restatement, Petitioner is
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1 neither a beneficiary nor a trustee (or a potential successor trustee). Accordingly, no standing is
2 conferred by § 17200.

3 Under the Elder Abuse statutes ("EADACPA"), specifically, Welfare & Institutions Code
4 (W&IC) § 15657.3(d), Petitioner claims to have standing as a child of the deceased to bring her COA as
5 an "interested party," as the term is defined in Probate Code § 48. The definition includes "any child" of
6 the elder "...having a property right in or claim against a trust estate or the estate of a decedent which
7 may be affected by the proceeding." Because Petitioner is not a beneficiary of the SP Trust Restatement,
8 she has no property right in, or claim against, the subject Trust, and therefore lacks standing. See
9 *Tepper v. Wilkins* (2017) 10 Cal. App. 5th 1198, 1206 (simply being an elder's child is not sufficient to
10 confer standing under PC § 48 where the child has no cognizable interest in the subject trust).

11 Additionally, such an action brought after the death of the elder is in the nature of a survival
12 action (wherein an action that belonged to the deceased person is brought on his or her behalf). See
13 Balisok, Russell et. al., *California Elder Law Litigation* (CEB: 2017 Rev. Ed) at § 6A.20; CCP § 377.30
14 ("A cause of action that survives the death of the person entitled to commence an action or proceeding
15 passes to the decedent's successor in interest, subject to Chapter 1 (commencing with Section 7000) of
16 Part 1 of Division 7 of the Probate Code, and an action may be commenced by the decedent's personal
17 representative or, if none, by the decedent's successor in interest"). In such a case, W&IC §
18 15657.3(d)(1) provides that the requirements of Civil Code § 377.32 must be satisfied. CC § 377.32
19 requires that a person who seeks to commence a survival action must file an affidavit stating (among
20 other things) that he or she is the decedent's successor in interest (as defined at CCP § 377.11) or
21 authorized to act on behalf of the successor in interest. See CCP § 377.32(a)(5)(A) and (B). The record
22 does not reflect that Petitioner has filed any such affidavit, nor could she, because she is neither Robert's
23 successor in interest or authorized by his successor to bring the action. CCP §377.11 defines a successor
24 in interest as follows: "For the purposes of this chapter, 'decedent's successor in interest' means the
25 beneficiary of the decedent's estate or other successor in interest who succeeds to a cause of action or to
26 a particular item of the property that is the subject of a cause of action." In *Lickter v. Lickter* (2010) 189

1 Cal. App. 4th 712, 735, the court held that the petitioners, grandsons of the deceased trustor, were not
2 successors in interest entitled to bring a survival action for elder abuse because they were no longer
3 beneficiaries—they succeeded only to money left to them under the trust. All the rest of the trustor's
4 property—including any cause of action for elder abuse she may have had—passing to the residuary
5 beneficiary. The court held that the petitioners lacked standing to sue under the elder abuse statutes
6 because they were no longer beneficiaries or "interested persons;" thus it affirmed the trial court's entry
7 of summary judgment against them. It explained:

8 To be an "interested person" for purposes of instituting or participating in a particular
9 proceeding under *Probate Code section 48*—and, by extension, under subdivision (d) of
10 Welfare and Institutions Code section 15657.3—the person must have an interest that may be
11 impaired, defeated, or benefited by the proceeding. Plaintiffs were *former beneficiaries* of Lois's
trust, as they already had been paid the amounts they were owed under the trust. Thus, plaintiffs
had no such interest in this elder abuse action.

12 *Id.* at 718. Likewise, the Petitioner herein is neither a beneficiary nor a successor trustee, nor otherwise
13 an "interested person" under the SP Trust Restatement. Therefore, she lacks standing to bring the
14 Petition.

15 **THIRD AFFIRMATIVE DEFENSE**

16 (Estoppel)

17 2. As a separate affirmative defense, the Petition, and each cause of action alleged therein, is
18 barred by the conduct, actions and inactions of Petitioner, which amount to and constitute an estoppel of
19 the claims and any relief sought by the Petition.

20 **FOURTH AFFIRMATIVE DEFENSE**

21 (Petitioner's Action Barred by No Contest Clause)

22 4. As a separate affirmative defense, Petitioner's action and relief sought is barred in its entirety
23 by Section 7.06 of the SP Trust Restatement, captioned "Trust Contests," which provides in pertinent
24 part:

25 In the event any beneficiary under this Trust shall, singly or in conjunction with any other
26 person, contest in any court the validity of this Trust, or any amendment to or Restatement of
27 this Trust, or of the Trustor's Last Will and Testament, or shall seek to obtain an adjudication in

1 any proceeding in any court that this Trust or any of its provisions...is void, or to seek otherwise
2 to void, nullify or set aside this Trust or any of its provisions, then in that event the rights of the
3 person to take any beneficial interest given to him or her by this Trust shall be revoked and said
4 beneficial interest is to be distributed as it would have been distributed had the contesting person
5 or persons predeceased the execution of this Declaration of Trust.

6 An essentially identical "Trust Contests" provision is included in the previous version of (and
7 amendment to) the subject Trust, including the original SP Trust, First Amendment to the SP Trust, and
8 First Amendment to the SP Trust Restatement (See Petition Exhibits A (Sec. 7.06, p. 7-2), B (¶ 4, p. 7),
9 C (Sec. 7.06, p. 7-2), and D (¶ 3 p. 2). Although Petitioner is no longer a beneficiary under the presently
10 operative SP Trust Restatement, in her Petition she requests an Order invalidating the SP Trust
11 Restatement and reinstating the SP Trust as contained in the First Amendment to the SP Trust, wherein
12 she was named as both a beneficiary and successor trustee (Petition ¶ 48, Ex. A and B). Accordingly,
13 the no contest clauses contained within these Trust documents likewise preclude the present action. See
14 *Monteganiv. Johnson* (2008) 162 Cal. App. 4th 1231.

15 Petitioner's pleading is a direct contest, brought without probable cause, which alleges the
16 invalidity of a protected instrument—specifically, the SP Trust Restatement (as amended); therefore, the
17 subject clauses are enforceable against the action under Probate Code §§ 21310(b) and 21311(a)(1). PC
18 § 21311(a) provides that a no contest clause may be enforced against "(1) [a] direct contest that is
19 brought without probable cause." A "direct contest" is defined in PC § 21310 (b) to mean: "[A] contest
20 that alleges the invalidity of a protected instrument or one or more of its terms, based on one or more of
21 the following grounds: [¶] ... [¶] (4) Menace, duress, fraud, or undue influence." PC § 21311(b)
22 provides, "For the purposes of this section, probable cause exists if, at the time of filing a contest, the
23 facts known to the contestant would cause a reasonable person to believe that there is a reasonable
24 likelihood that the requested relief will be granted after an opportunity for further investigation or
25 discovery." The "facts" alleged in the Petition and supporting documents (as opposed to the opinion,
26 conjecture, and unsupported speculation set forth in the allegations and unsworn statements submitted as
27 exhibits to the Declaration of Barbara K. Meserve) fail to establish such probable cause, especially when

1 considered in conjunction with the strong evidence submitted by the Trustee demonstrating that Robert
2 was mentally competent with testamentary capacity and acting in accordance with his free will at all
3 pertinent times in which he expressed his intentions as Testator with respect to the SP Trust Restatement
4 and the First Amendment thereto, and executed the pertinent documents. See Williams Dec. ¶¶ 8, 9 and
5 Exs. 1, 2, 3, 4 thereto.

6 **FIFTH AFFIRMATIVE DEFENSE**

7 (Failure of Statutory Condition Precedent)

8 5. Petitioner's claim for Elder Abuse is in the nature of a survival action (wherein an action that
9 belonged to the deceased person is brought on his or her behalf). See Balisok, Russell et. al., *California*
10 *Elder Law Litigation* (CEB: 2017 Rev. Ed) at § 6A.20; CCP § 377.30 ("A cause of action that survives
11 the death of the person entitled to commence an action or proceeding passes to the decedent's successor
12 in interest...and an action may be commenced by the decedent's personal representative or, if none, by
13 the decedent's successor in interest"). In such a case, the requirements of Civil Code § 377.32 must be
14 satisfied, as stated in W&IC § 15657.3(d)(1). CC § 377.32 requires that a person who seeks to
15 commence a survival action must file an affidavit stating (among other things) that he or she is the
16 decedent's successor in interest (as defined at CCP § 377.11) or authorized to act on behalf of the
17 successor in interest. See CCP § 377.32(a)(5)(A) and (B). The record does not reflect that Laura Rau has
18 filed any such affidavit, nor could she, because she is neither Robert's successor in interest or authorized
19 by his successor to bring the action. CCP §377.11 defines a successor in interest as follows: "For the
20 purposes of this chapter, 'decedent's successor in interest' means the beneficiary of the decedent's estate
21 or other successor in interest who succeeds to a cause of action or to a particular item of the property
22 that is the subject of a cause of action." Laura Rau is no longer a beneficiary under Trust A, which is the
23 subject of the present action. See *Lickter v. Lickter* (2010) 189 Cal. App. 4th 712, 735 (finding
24 petitioners were not successors in interest entitled to bring a survival action for elder abuse because they
25 were no longer beneficiaries under the subject trust). Petitioner has failed to satisfy this statutory
26 prerequisite to asserting the subject action.

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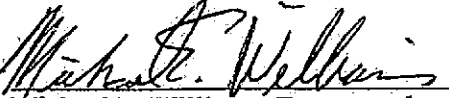
1 issue herein be denied. For the reasons and objections set forth herein, Respondent MICHAEL E.
2 WILLIAMS, Trustee, respectfully requests:

- 3 1. That the Petition of LAURA H. RAU be denied in its entirety;
- 4 2. That LAURA H. RAU be ordered by this Court to reimburse the SP Trust Restatement for its
5 reasonable attorney's fees and costs of suit incurred in defending against her Petition, pursuant to this
6 Court's inherent authority; Civil Code § 1717; the substantial benefit doctrine (see *Smith v. Szezyller*
7 (2019) 31 Cal. App. 5th 450, 460); and other applicable authority;
- 8 3. For such other and further relief as the Court may deem proper.

9
10 Respectfully Submitted,

11 Dated: August 12, 2019

12 Michael E. Williams, Attorney at Law

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15 Michael E. Williams, Trustee and
16 Attorney for Respondent,
17 SP Trust Restatement
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VERIFICATION

I, Michael E. Williams, am the Respondent herein, and I am authorized to sign this Verification on my own behalf. I have read the foregoing Answer to the Petition of Laura Rau for an Order Finding that the Second Amendment and Restatement to the Robert H. Rau Separate Property Trust Should be Invalidated Based on Undue Influence and Other Relief and it is true of my own knowledge, except as to those matters stated on information or belief, and as to those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on AUGUST 12, 2016, at ENCINITAS, California.


MICHAEL E. WILLIAMS